

Critical Areas Variance Narrative
June 30, 2020

CRITERIA:

Issaquah Municipal Code (“IMC”) Section 18.10.430 allows for variances from Critical Areas Regulations if the following criteria are met:

- A. Applicability: The variance procedures herein apply to all property outside the jurisdiction of the Shoreline Master Program. Variances for development on property located within shoreline jurisdiction shall follow the variance process, standards and criteria listed in the Shoreline Master Program (SMP) and Appendix A of the SMP, Critical Area Regulations.***

Response: The properties included in Mine Hill Road Plat (345, 375 Mine Hill Rd SW), along with the proposed access road connecting to Clark Street, are outside of the jurisdiction of the Shoreline Master Program.

- B. Purpose: The variance provision is provided to property owners who, due to the strict implementation of this chapter and/or to unusual circumstances regarding the subject property, are deprived of privileges commonly enjoyed by other properties in the same vicinity, zone and under the same land use regulations or have been denied all reasonable use of the property; provided, however, that the fact that surrounding properties have been developed under regulations in force prior to the adoption of this Code shall not be the sole basis for the granting of a variance.***

Response: The variance to allow stormwater outfalls and water and sewer mains within the inner 75% of the Class 2 stream buffer are needed due to the unusual circumstances regarding the subject property.

- The stormwater outfall from the vault cannot feasibly be located to meet the code requirement without causing a safety hazard, undermining the stability of a steep slope that is adjacent to the stream.
- The stormwater outfall adjacent to Mine Hill Rd SW (a public street) is required because there is no feasible alternative to address the stormwater from frontage improvements required by the City, given the topography of the road and that it is already located within the stream buffer.
- Due to the unique topography of the site, and the location of existing public water and sewer mains where utilities serving the plat must connect, the proposed water and sewer mains cannot be placed within the outer 25% of critical areas buffers.

The variance is required to avoid being denied all reasonable use of the property. There are no other feasible alternatives to address stormwater outfalls or provide water/sewer service to the developable areas of the property, regardless of the intensity of the development.

The proposed variance meets the purpose for which the provision was created.

- C. Variance Granted:** *Before any variance may be granted, the applicant must file an application with the Permit Center and must demonstrate to the satisfaction of the Hearing Examiner the ability to meet all of the criteria in subsection D of this section. In the event that the applicant is not able to fulfill all of the criteria in subsection D of this section, a demonstration must be made to the satisfaction of the Hearing Examiner, regarding the ability to successfully meet all of the criteria established in subsection E of this section.*

A variance application shall be submitted to the Permit Center along with a critical areas special study, where applicable.

Response: This narrative, along with the supporting plat documents and studies, is written to address the variance criteria, as noted below. The critical areas variance application will be duly filed with these documents, as required by this provision.

D. Variance Criteria Established:

- 1. *The variance is in harmony with the purpose and intent of the relevant City ordinances and the Comprehensive Plan;***

Response: The variance is in harmony with the purpose and intent of relevant City ordinances related to subdivisions (IMC 18.13.010) and critical areas regulations (IMC 18.10.360), among others. Some examples:

IMC 18.10.360(A): Protect members of the public and public resources and facilities from injury, loss of life, property damage or financial losses due to flooding erosion, landslides and seismic events, soil subsidence and steep slope failures.

The outfall of the stormwater detention vault would typically be limited to within the outermost 25% of the stream buffer (IMC 18.10.775.F.1). However, the site plans and geotechnical report clearly show that any outfall location in this area would be at the top of a 40% slope, where an outfall could cause erosion, landslides, or other steep slope failures. The outfall must be located at the toe of the slope where this risk can be minimized, but still outside of the Ordinary High-Water mark of the Class 2 stream. This impact cannot be avoided without endangering the public. The disturbance of the buffer and slope will be mitigated with native plantings, in accordance with restoration and enhancement requirements found in IMC 18.10.795.

In addition, the outfall for stormwater collected from the frontage improvements along Mine Hill Rd is located on the downhill portion (northend) of Mine Hill Rd SW, as is required. This portion of the road is already located within the stream buffer and there is no area along the west side of Mine Hill Rd SW that is within the outer 25% of the stream buffer. Nonetheless, the stormwater collection and outfall is necessary to avoid flooding, erosion, and for the safe operation of the public road.

IMC 18.13.010(B): That the public health, safety, general welfare, and aesthetics of the City shall be promoted and protected, complying with the provisions of Chapter 58.17 RCW;

IMC 18.13.010(D): That the proper provisions for all public facilities, including connectivity, circulation, utilities, and services, shall be made;

IMC 18.13.010(E): That maximum advantage of site characteristics shall be taken into consideration;

The development is required to be served by adequate public facilities, including public water and sewer systems.

- The City has requested that a water main that creates a loop through the property between mains on Mine Hill Rd SW and Clark Street – this helps maintain water pressure and provides redundancy for the benefit of the entire community.
- The property slopes down from west to east (towards the Class 2 stream), so the sewer main following the grade to connect to the existing sewer main on Mine Hill Rd SW is necessary for new homes to have gravity connections. This is the best outcome for operation of the City's sewer system.

The path of the sewer and water mains through the critical area buffer follows the path of an existing access road that already bisects the critical area and crosses the Class 2 stream. The access road will be removed (with the exception of a City easement to maintain stormwater access to the stream) and replaced with a pedestrian trail and buffer enhancement. This is an elegant solution that takes full advantage of the existing site characteristics (topography, existing infrastructure), minimizes impacts, dovetails with the creation of a new amenity, and provides for the safe and effective operation of these essential public utilities.

Accordingly, this criterion has been met.

- 2. The variance shall not constitute a grant of special privilege which would be inconsistent with the permitted uses, or other properties in the vicinity and zone in which the subject property is located;***

The variance does not grant a special privilege that is inconsistent with permitted uses either on this property, or other properties nearby. The proposed plat includes the permitted use of single-family detached and attached homes, which is an allowed use in the SF-S zone (See IMC 18.06.130).

This criterion has been met.

- 3. That such variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity, located in the same zone as the subject***

property and developed under the same land use regulations as the subject property requesting the variance;

As noted in Section D.1, this variance is necessary because of the existing topography, location and type of critical areas (steep slopes, stream), and location of existing public utility mains and roads. These factors (safety, function of public utility systems, etc.) necessitate the location of the water and sewer mains and stormwater outfalls to be in the proposed locations in order to allow for the property to be reasonably developed. The proposed development is in keeping with the use rights and privileges afforded to other similarly-situated properties in the vicinity.

It should be noted that the public right of way proposed within the development, along with the utility mains that are part of this subject variance, will connect to adjacent property to the south. This will allow the provision for water and sewer service for future development without the need for similar variance.

This criterion has been met.

- 4. That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated;***

The variance will not be materially detrimental or injurious to either the subject property or improvements in the vicinity. In contrast, the looping of the water main through the critical area, and placement of the stormwater outfalls below the toe of a steep slope and adjacent to the existing road, respectively, enhances safety both on the property and in the vicinity of the property. The placement of the sewer main will maintain a gravity connection, which is safer and more reliable and pump systems, and avoid undue burden upon the City's utility.

This criterion has been met.

- 5. That alternative development concepts that comply with the Code provisions to which the variance is requested have been evaluated, and that undue hardship would result if the strict adherence to the Code provisions were required;***

Yes, these options have been evaluated, and the proposed alignment of the stormwater outfalls and utility mains is the consensus recommendation of City staff, the City's consultants, and the applicant's consultants. There is no feasible alternative that strictly adheres to the Code requirements that would not otherwise compromise safety or cause an undue hardship.

This criterion has been met.

6. *The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and*

The variance is the minimum necessary, and would cause the least amount of disturbance necessary, to provide for a safe stormwater outfall and adequate utilities to serve the plat.

- Moving the stormwater vault and outfall further uphill (which would reduce buildable area) would not solve the core problem of the outfall placing significant surface water on top of a steep slope.
- For the other stormwater outfall (adjacent to Mine Hill Rd), the only area possible for a discharge point is near the stream culvert because the existing public road itself encroaches significantly into the stream buffer.
- We evaluated moving the water and sewer mains towards the north property line (and away from following the existing driveway path), but found that this option would remove several significant trees, and encroach into the stream buffer the same amount as the proposed path. A portion of the driveway, regardless of the alignment of the water and sewer mains, would have to remain as the City has a stormwater easement adjacent to the stream and relies on this path to maintain the culvert inlet.

This criterion has been met.

7. *The need for the variance is not the result of actions of the applicant or property owner.*

The variance is necessary because of preexisting conditions or development patterns that are outside of the control of the applicant/property owners.

The City has installed and maintained the public water and sewer systems, extending these services to the subject properties and surrounding properties. The method of connecting to these preexisting systems, along with sound engineering, safety, and maintenance practices (looping the water main, providing gravity sewer connection), is a “puzzle piece” for every development. In this case, the “puzzle piece” needed for a reasonable development on this property to connect to these utility systems requires a variance.

In addition, Mine Hill Rd SW, which encroaches significantly into the Class 2 stream buffer, is a public street. The City installed and maintains the culvert that connects to the Class 2 stream and goes under Mine Hill Rd SW. The ROW dedication and frontage improvements required by the City necessitates the stormwater outfall in the stream buffer because of the preexisting alignment of the road.

Further, the topography of this property is a result of natural processes. While there has been some minor development/grading on the property in the past (three existing single-family homes), the need for a variance for the stormwater vault

outfall is related to steep slopes adjacent to the stream that can be readily observed on this property and surrounding property.

This criterion has been met.

E. Reasonable Use Variance Criteria Established: Only after the determination, by the Hearing Examiner, that the proposal does not meet all of the variance criteria listed above, may the application be reviewed, by the Hearing Examiner at the same public hearing, under the following criteria:

- 1. There is no reasonable use of the property left; and***
- 2. That the granting of this variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated; and***
- 3. The variance granted is the minimum amount that will comply with the criteria listed above and the minimum necessary to accommodate the permitted uses proposed by the application, and the scale of the use shall be reduced as necessary to meet this requirement; and***
- 4. The need for the variance is not the result of actions of the applicant or property owner.***

With the discussion provided above, we believe the variance criteria under Section D have been met.

F. Wetland Buffer Variance: The Hearing Examiner may reduce wetland buffer widths beyond requirements of IMC 18.10.650 only through review and approval of a variance application. In addition to the variance requirements the applicant must demonstrate that:

- 1. No direct or indirect, short-term or long-term, adverse impacts to wetlands would result from the proposed buffer reduction; and***
- 2. The project includes a wetland and/or wetland buffer enhancement plan using native vegetation which demonstrates that an enhanced buffer will improve the functional attributes of the buffer to provide additional protection for wetlands functions and values and that the new buffer will provide the same level of protection to the wetland as the original buffer.***

This does not apply.

G. Cumulative Impact of Area Wide Requests: In the granting of variances from this Code, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies and intent set forth in this chapter.

Understood. We believe the proposed variance reduces the likelihood that properties to the south (which will be served by the public road and utilities in this proposed development) will require a variance.

- H. Public Hearing: The Hearing Examiner shall hold a public hearing and notice shall be provided under the provisions of the Land Use Code and Issaquah Municipal Code. The applicant or representative(s) shall appear in person at the hearing.*
- I. Notice of Hearing Examiner's Decision: Copies of the Hearing Examiner's decision shall be mailed to the applicant and to other parties of record not later than three (3) working days following the filing of the decision. "Parties of record" shall include the applicant and all other persons who specifically request notice of the decision by signing a register provided for such purpose at the public hearing.*
- J. Appeals: Decisions by the Hearing Examiner may be appealed to the City Council in accordance with IMC 18.04.250, Administrative appeals. (Ord. 2669 § 1 (Exh. A), 2013; Ord. 2301 § 3, 2001; Ord. 2108 § 10.2.10, 1996).*

Understood and acknowledged.

CONCLUSION:

Based on the foregoing discussion and demonstration in the enclosed documents that the criteria related to a variance been satisfied, we respectfully request that the City of Issaquah grant a critical areas variance from IMC 18.10.775.F.1 for the location of the water and sewer utility mains and stormwater outfalls within the Mine Hill Road Plat.